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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,998	01/16/2004	Charles W. Klein	4577-4000US	8676

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NEW YORK, NY 10281-2101

EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/759,998

Applicant(s)

KLEIN ET AL.

Examiner

Michael Brown

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 41-53 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-38 is/are allowed.
- 6) ☒ Claim(s) 1-11, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ALL IDS.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

Claim 19 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must depend from another claim in the alternative. See MPEP § 608.01(n). Accordingly, the claim 19 not been further treated on the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-11 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leventhal '900 in view of Cutler '608.

Leventhal discloses in figures 1-14 a selective vibrating device for transmitting vibrations to a user situated on a support medium, the device comprising a vibrating member 12, comprising a vibration mechanism 16, and at least two regions of material, a vibration transmission region 22, and a vibration dampering region 20, the vibration transmitting region is made of foam (which encompasses a cross-linked polyurethane gel) a power source 52, the vibrating dampering region provides a continuous lower surface for the vibrating member and a means (hook and loop) for holding the device in a fixed position (a folded position). However, Leventhal doesn't disclose a switch for

turning the vibration mechanism on and off, a timer, the dampering region being open cell foam or the dampering region being discontinuous islands of material. Cutler teaches in figures 1-5 a massaging device comprising a controller having a timer 44 and a switch 45 for turning the device off and on. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the controller as taught by Cutler could be incorporated into the device disclosed by Leventhal in order to be able to time how long vibration is applied to the user and to be able to turn the vibrating element off and on. The discontinuous islands are a design choice. The vibrating member being an open cell material is a choice of materials.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Salkinder.

Salkinder teaches in figure 1 a vibrating member 30, having a covering 50 that is made of rubber. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the cover as taught by Salkinder could be incorporated over the vibrating member disclosed by Leventhal and taught by Cutler to prevent moisture from reaching the vibrating mechanisms.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Komatsu.

Komatsu teaches in figures 1-2 a backup alarm. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the alarm as taught by Komatsu could be incorporated into the device disclosed by Leventhal and taught Cutler in order to alert the user that the device has stopped vibrating.

Allowable Subject Matter

Claims 12-18 and 20-40 are allowed.

Conclusion

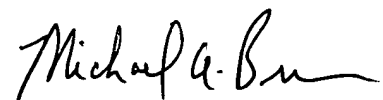
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. No additional prior art was cited in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown



MICHAEL A. BROWN
PRIMARY EXAMINER